



May 16, 2022

VIA ECF

Jacqueline Promislo

Direct Phone 215-665-2108

Direct Fax 215-989-4153

jpromislo@cozen.com

The Honorable Chad F. Kenney
6614 US Courthouse
601 Market Street, Courtroom 6-A
Philadelphia, PA 19106

**Re: McManus v. Walgreen Eastern Co., Inc. et al.
USDC for the Eastern District of PA, No. 21-2285**

Dear Judge Kenney:

Attached please find my submission, as ordered by the Court on May 12, 2022. The submission statement also includes one attached email I received from Robert Sanzo, counsel for Walgreens with two attached photos, which also includes a statement from Mr. Sanzo advising that these are the two photographs taken by his expert. The remaining portion of the email from Mr. Sanzo is redacted as it is not responsive to the Court's Order and furthermore, it is also protected by the joint defense privilege.

Respectfully submitted,

COZEN O'CONNOR

A handwritten signature in blue ink that reads "Jacqueline Promislo".

By: Jacqueline Promislo

JP/sg

cc: Stephen A. Scheuerle, Esquire (*via email*)
Robert L. Sanzo, Esquire (*via email*)
Richard K. Hohn, Esquire (*via email*)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT JOSEPH MCMANUS,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.: 21-cv-02285
v.	:	
	:	
WALGREENS COMPANY, et al.,	:	
	:	
Defendants.	:	

SUBMISSION BY BILCO’S COUNSEL PURSUANT TO COURT ORDER

1. Defendant The Bilco Company and Defendant Walgreens are parties to a Joint Defense Agreement relating to the above captioned litigation.
2. Bilco and Walgreens agreed to share in the cost of certain experts for the defense of this matter.
3. Bilco retained a mechanical engineer, Eugenia Kennedy, a principal of Exponent, to conduct an investigation, prepare a report, and testify in this matter. Walgreens did not share in the cost of, or the preparation of Ms. Kennedy’s report or testimony.
4. Upon information and belief, Walgreens separately retained an engineer, Jodi DeMarco, to conduct an investigation, prepare a report and testify in this matter.
5. Neither undersigned counsel, nor any other counsel for Bilco, nor any of Bilco’s experts or consultants had any communications with Mr. DeMarco relating to his inspections, opinions or report.
6. Communications exchanged between attorneys, pursuant to a joint defense agreement, such as e-mails, are privileged. *Teleglobe Communs. Corp. v. BCE, Inc.*, 493 F.3d 345, 364 (3d. Cir. 2007) (holding the “privilege allows attorneys representing different clients with similar legal interests to share information without having to disclose it to others”); *Narog*

v. City of Redwood City, No. C-13-03237 DMR, 2014 U.S. Dist. LEXIS 36193 at *23 (N.D. Cal. Mar. 17, 2014) (denying motion to compel e-mail, holding e-mail communication among counsel subject to joint defense privilege).

7. A party does not waive privileged documents or communications by producing them in response to a court order, since such production is not voluntary. *Leonen v. Johns-Manville*, 135 F.R.D. 94, 99 (D. N.J. 1990); *Bowen v. Parking Auth.*, No. 00-5765 (JBS), 2002 U.S. Dist. LEXIS 14585 at *14-15 (D. N.J. July 30, 2002) (“a production of documents ordered by a court does not constitute a waiver of attorney-client privilege because such production was not voluntary.”)

8. Undersigned counsel has no communications with Walgreens’ counsel about Mr. DeMarco’s May 2, 2022 inspection at any time before the inspection.

9. Without waiving any claim of privilege, undersigned counsel received two pictures from Walgreens’ counsel on May 3, 2022, the day after Mr. DeMarco conducted the inspection.

10. Without waiving any claim of privilege, attached hereto is an email responsive to this Court’s Order, which was received from Walgreens’ counsel, Rob Sanzo, on May 3, 2022, with two attached photographs.

Dated: May 16, 2022

Respectfully submitted,

COZEN O’CONNOR

By: /s/ Jacqueline Promislo, Esq.
Jacqueline Promislo, Esq.
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Attorney for Defendant The Bilco Company

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2022, a copy of the foregoing Jacqueline Promislo Submission Pursuant to Court Order was served upon the following counsel via email addressed as follows:

Steven A. Scheuerle, Esq.
Hohn & Scheuerle
1700 Market St. Suite 3242
Philadelphia, PA 19103
(215) 496-9995
Attorney for Plaintiff, Robert Joseph McManus

Robert L. Sanzo
Litchfield Cavo LLP
1515 Market St.
Suite 1220
Philadelphia, PA 19102
215-999-5774
Attorney for Walgreen Eastern Co., Inc.

/s/ Jacqueline Promislo, Esq.
Jacqueline Promislo, Esq.
Pennsylvania Bar No. 73705
Attorney for Defendant The Bilco Company

From: Promislo, Jacqueline
Sent: Monday, May 16, 2022 9:43 AM
To: Harn, Adam Stanley
Subject: ONE EXHIBIT TO MY SUBMISSION- I will send the photos that were attached separately
Importance: High

From: Sanzo, Robert <sanzo@litchfieldcavo.com>
Sent: Tuesday, May 3, 2022 8:18 PM
To: Promislo, Jacqueline <JPromislo@cozen.com>
Subject: RE: Mc Manus vs Walgreens

****EXTERNAL SENDER****

Jackie - these are the two photographs taken by Jody DeMarco as he opened the subject lock with one hand. REDACTED PORTION: NOT RESPONSIVE TO COURT ORDER. PROTECTED COMMUNICATIONS

Robert L. Sanzo
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